



Town of Barnstable
Zoning Board of Appeals
Minutes

March 28, 2012

Laura Shufelt - Chair	Present
William Newton – Vice Chair	Present
Craig Larson - Clerk	Present
Alex Rodolakis	Absent
Brian Florence	Present
George Zevitas	Present

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant

At 7:04, Laura Shufelt opens the hearing.

Introduction of Board Members – Members introduce themselves.

Approval of Minutes from: January 11, 2012 and January 25, 2012

Motion is made by William Newton and seconded by Brian Florence to accept the minutes as presented.

Vote:

All in favor.

At 7:05, Laura Shufelt calls the Centerville Gardens appeal and reads it into the record:

7:00 PM

Appeal No. 2012-007 - Continued

Centerville Gardens II, LLC

Centerville Gardens II, LLC. has petitioned for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to allow a medical office use in the Highway Business Zoning District. The Petitioner seeks to construct a 9,925 square foot building for office and dental office use. The subject properties are located at 1060 Falmouth Road, Hyannis, MA and 28 and 36 Wequaquet Lane, Centerville, MA as shown on Assessor's Map 250 as Parcels 023/X01, 023/X02, and 024. They are in the Highway Business and Residence D-1 Zoning Districts and the Groundwater Protection Overlay District.

Attorney David Lawler is representing the applicant. Laura Shufelt indicates that because she received the information late today she would ask that they press for a continuance. Attorney Lawler indicates that they have a potential tenant and would like to go forward tonight. He indicates that he has met with the Building Commissioner and Growth Management and the only change is that the building has been moved up and the parking changed. Attorney Lawler indicates that the entire project will fall apart if they cannot get a vote tonight and that the changes that were made are very simple. He indicates that by moving the building forward,

they took some parking spaces from the middle and moved them to the back of the lot and that the zoning district allows for a bank and for a series of uses including dental office.

Laura Shufelt indicates that because she hasn't seen the letter until tonight she would not feel comfortable going forward. Attorney Lawler reiterates that they have only moved the building and is asking to go forward. George Zevitas agrees with Laura, Brian Florence is willing to hear it and Craig Larson thinks he can make a presentation but that the board doesn't have to vote on it tonight. Attorney Lawler and the board discuss if they should go forward. The Chair indicates that they can go forward but is not guaranteeing that it will result in a vote tonight.

Members assigned: George Zevitas, Brian Florence, Craig Larson, William Newton, Laura Shufelt

Also with Attorney Lawler tonight are Engineer Raul Lizardi-Rivera from Holmes and McGrath as well as the principals, Joe Kelliher and Steven Miele. Attorney Lawler indicates that there will be 5 tenants which will include three dental offices and which has been reviewed by the Board of Health.

Attorney Lawler indicates that as-of-right, an office building and a bank (without a drive through) could be built and that what they are proposing to do is build an office building consisting of over 9000 square feet. He indicates that Growth Management had concerns with this property/area because of past and present traffic issues. A concession in the past was to access an easement to access Route 28 through the lot that is currently occupied by CVS. They will keep the vegetated buffer. They will have employees parking in the back of the parking lot. Because of Title V requirements for water usage, they will be seeking to have 3 dentists there which has been approved by the Board of Health. The remaining square footage which will consist of approximately over 3000 square feet will be an office building for the Symphony. The traffic patterns have been approved by Site Plan Review. The landscape plan provides for a large buffer on Route 28 with ample coverage to beautify the lot. With respect to the use, Attorney Lawler indicates that they meet the parking requirements, water requirements and buffer requirements. The proposed site is an improvement over what is there and they will not be doing any work at all in the residential part of the lot.

William Newton asks for clarification on the parking spaces. Raul Lizardi-Rivera indicates that the parking requirement is for one space for every 300 square feet and that number comes out to be 34 but there is another requirement for one additional parking space for each suite which brings the total to 37. The board asks to look at the easement document. Elizabeth Jenkins to provide them with a copy.

George Zevitas asks what happens to the remaining parcels B & D. Attorney Lawler indicates that they will be combining the lots under the recommendation of Growth Management and need the acreage for the Title V requirement.

William Newton asks if there will be access road off of Wequaquet Lane. Attorney Lawler indicates that approximately 5 years ago when they had come before the Zoning Board, the neighbors vehemently opposed it and they withdrew it.

Laura Shufelt asks about temporary access from Wequaquet during construction and asks about the plan after. Raul Lizardi-Rivera indicates that to avoid any construction vehicles accessing the property from Route 28, it was agreed it would be a temporary access. After all construction is done, this temporary access will be removed and seeded.

Craig Larson indicates that he has a question as he would assume that whoever controls CVS could stop people from driving around through CVS and what they can't stop is anyone within this 1260 square feet.

Steve Miele,, owner of the property, indicates that before he sold to CVS he made sure he had an easement. In the easement language, any traffic coming from his property has full access out that easement and through and back out to Wequaquet Lane.

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition. No one speaks.

They discuss the easement. Attorney Lawler indicates that they have to maintain the easement and then reiterates the relief they are seeking.

Elizabeth Jenkins indicates that they never received the square footage for the proposed dentist office and that it is important for the calculations for Title 5. She indicates that the office space cannot exceed 4600 square feet is not noted in the findings and that the board might want to make a condition to that effect that there as long as the building is occupied by three dentists, the office space cannot exceed 4600 square feet. Attorney Lawler is agreeable to that condition.

Craig Larson clarifies that they are using revised plans dated 03-23-12 and the landscaped plan is dated 03-22-12.

Brian Florence makes findings:

Centerville Gardens II, LLC has petitioned for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to allow a medical office use in the Highway Business Zoning District. The Petitioner seeks to construct a 9,925 square foot building for office and dental office use. The subject properties are located at 1060 Falmouth Road, Hyannis, MA and 28 and 36 Wequaquet Lane, Centerville, MA as shown on Assessor's Map 250 as Parcels 023/X01, 023/X02, and 024. They are in the Highway Business and Residence D-1 Zoning Districts and the Groundwater Protection Overlay District

- 1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:

Section 240-25(C)(1) of the Barnstable Zoning Ordinance permits dental offices in the HB District provided a Special Permit is obtained from the Zoning Board of Appeals.**
- 2. That a site plan has been reviewed and found approvable by the Site Plan Review Committee.

The Site Plan Review Committee reviewed and approved the proposed development.**
- 3. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**
- 4. The use does not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community in accordance with Section 240-25(C)(1).**

**Vote:
All in favor**

A motion is made by Brian Florence to grant the relief being requested with the following conditions:

- 1) Special Permit 2012-007 is granted to Centerville Gardens II, LLC to allow an office of up to 5325 square foot dental office in the Highway Business District at 1060 Falmouth Road, Hyannis and Centerville.
- 2) The properties subject to this Special Permit are 1060 Falmouth Road and 28 and 36 Wequaquet Lane, a combined 2.88 acres.
- 3) The site shall be redeveloped in substantial conformance with the plans entitled "Site Plan prepared for Centerville Gardens, LLC", pages 1- 6, last revised on March 23, 2012, drawn and stamped by Holmes and McGrath, Inc. The building shall be constructed in substantial compliance with the elevations entitled "Keller & Co., Centerville Gardens, 1060 Falmouth Road" dated February 27, 2012, drawn by Brown, Lindquist, Fenuccio & Raber Architects, Inc.
- 4) Landscaping shall be installed in substantial conformance with the plan entitled "Landscape Plan - Centerville Gardens, 1060 Falmouth Road" last revised March 22, 2012, drawn and stamped by Leslie Fanger, RLA of BSC Group.
- 5) All commercial activity and associated site improvements shall remain on the portion of the property zoned HB. The residentially-zoned portion of the property shall remain undeveloped and in a natural state, with the exception of the temporary construction drive. No parking of vehicles or storage shall be permitted on the residentially-zoned property. Clearing of mature vegetation on the residentially-zoned property is prohibited, other than that which is required to construct the temporary construction drive.
- 6) Prior to issuance of a Certificate of Occupancy, the temporary construction access and drive shall be removed and the area restored to a natural state.
- 7) Prior to issuance of a building permit, a landscape plan prepared by a Registered Landscape Architect shall be submitted to the Growth Management Department Director for review and approval. The landscape plan shall show the following:
 - a. Restoration of all disturbed areas, including but not limited to the temporary construction access drive, located in the residentially zoned portions of the subject property with drought-tolerant native grasses.
 - b. Street trees with a minimum 3-inch caliper shall be planted along the frontage of Wequaquet Lane.
 - c. Areas of mature vegetation to be retained.

All planting shown on the plan shall be installed prior to a Certificate of Occupancy.

- 8) No outdoor storage shall be permitted, unless approved by the Building Commissioner. No storage shall be permitted in parking spaces or drive aisles, or in trailers, containers, trucks, or storage units.
- 9) The development shall meet all requirements of Title V and the Board of Health, including requirements to combine the subject properties into one ownership lot. As required by Title V and Health regulations, a recorded plan uniting the lots shall be submitted to the Zoning Board of Appeals office prior to issuance of a building permit.
- 10) The development shall be in compliance with all requirements of the Building Code, Hyannis Fire Department, COMM Water Department, and be in compliance will all conditions of the Site Plan Review approval. When available, the property shall connect to public sewer.
- 11) This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division for this special permit to be in effect. The rights authorized by this special permit must be exercised within two years, unless extended.

Attorney Lawler recommends that paragraph one should read: To allow dental office with no more than three dentists and remaining office space shall not exceed 4600 square feet".

Brian Florence accepts the amendment.

William Newton seconds.

Vote:

AYE: Brian Florence, George Zevitas, Craig Larson, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

At 8:00 PM, Laura Shufelt calls the Joyce appeal and reads it into the record:

7:00 PM

Appeal No. 2010-010 - Continued

Joyce Landscaping, Inc.

Joyce Landscaping, Inc. has applied for a modification of Use Variance No. 1998-16, as modified by Appeal No. 2009-036. Pursuant to the requirements of conditions No. 27 and 28 in Appeal No. 2009-036, the Applicant seeks to modify the conditions of the variance to allow construction of an approximately 9,525 square foot warehouse and office building. The building will replace two office trailers and eleven storage boxes and two greenhouses will be relocated. Further, the Applicant is seeking to allow a second business sign to be located on the proposed building, for a total of 50 square feet of signage on the property. This request would modify

Condition No. 8 of the existing use variance. The subject properties are located at 50 and 68 Flint Street, Marstons Mills, MA as shown on Assessor's Map 123 as parcels 004/006 and 004/007. They are in the Residence F Zoning District.

Members assigned: Brian Florence, George Zevitas, Craig Larson, William Newton, Laura Shufelt

Attorney John Kenney is representing the applicant. Also with him tonight are Chris Joyce – President and Dan Shaughnessy - General Manager of Joyce Landscaping.

Attorney Kenney gives the history regarding when Joyce Landscaping was first established and when they appeared before the board in 2009. At that time, the board granted the use variance with a condition that they would need to come back within two years in order to be granted relief in order to construct the new building. Attorney Kenney indicates that the office trailer on-site was moved over and the 25 buffer is being maintained. As for the 50 foot front yard buffer, it is reinstalled and re-vegetated and complete. The storage bins were moved to the northwesterly part of the lot. The next step was to develop the plans for the new building. Attorney Kenney indicates that this has been through site plan review and approved. He references page 1 and 2 of the site plan. He indicates that the two greenhouses will be removed as well as the storage boxes and that there will be a new septic system. He indicates that, on-site, there will also be other various improvements, additional parking is being provided. One hundred and forty spaces are required and they have one hundred fifty which exceeds the requirement.

Chris Joyce indicates that they have reconfigured some parking and that at the far right end of the building where the pergola protrudes out front is where the offices are to be and the rest will be warehouse space. He indicates that it will be a vertical building with stone veneer on the bottom four feet with a blue stone cap. It will have three pergolas on the front. The parking lot will be stone-edged. They have reconfigured the parking for employee and visitor parking. The drainage was substantially installed over the last two years and basically have two, 500 gallon drainage pits on either side of the building for roof water runoff.

Attorney Kenney indicates that it could be granted without nullifying or substantially derogating from the intent of the bylaw. The noise and impact on the abutters should be decreased substantially.

William Newton asks Attorney Kenney about the signage. Attorney Kenney indicates that the logo on the side of the building is a decorative feature which will break up the massing on the wall.

Brian Florence clarifies that the single family home no longer exists on the lot. Mr. Joyce indicates that it previously was a single family home but is now an office on the first floor, storage on the second and a training room on the third which was previously apartments.

Laura Shufelt asks about the adjacent property on Osterville/WBarnstable Road. Attorney Kenney indicates that it is not part of the use variance and will be used for plant propagation and is also within the residential district which the Building Commissioner has reviewed. Chris Joyce explains that the structure on the property in question is empty and at some point will do something with it.

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition.

Craig Bush lives on Osterville/WBarnstable Road and is here to get a feel for what they are looking for. He asks about the façade from Flint Street and, as there is a fair amount of linear footage on this building and if there are plans to soften the exterior with plantings. Also, as for lighting, he believes that since this abuts residential properties, he is concerned about commercial lighting. Also, he asks about the placement of greenhouses on the adjacent lot.

Chris Joyce indicates that he will be complementing the building with more plantings and a rolling lawn with seasonal colors. The back of the building will be covered by this existing shingled building and the rest is where the three bay garage doors are and have already installed buffered landscaping but does not have any plans to plant the back of the building. As for the lighting, he hasn't thought too much about that as of yet, he wants to keep it in the Cape Cod theme and will comply with whatever they need to and could put decorative motion sensor lights. Brian Florence recommends avoiding shining them into the residential neighborhood.

Attorney Kenney indicates that the greenhouses have to be removed and could be moved to the residential lot, but that they have to go back to the Building Commissioner and has suggested under the ordinance that it is allowed as-of-right but that Tom Perry wanted time to review it. They will work with Mr. Bush about the lighting. Brian clarifies that it will be done before the occupancy permit.

William Newton does findings:

In Appeal No. 2012-100, the applicant is Joyce Landscaping. The subject property is a 4.55 acre lot at 50 and 68 Flint Street in Marstons Mills.

1. In Appeal No. 2012-010, Joyce Landscaping, Inc. has applied to modify the conditions of Use Variance No. 1998-16, as modified by Appeal No. 2009-036. Pursuant to the requirements of conditions No. 27 and 28 in Appeal No. 2009-036, the Applicant seeks to modify the conditions of the variance to allow construction of an approximately 9,525 square foot warehouse and office building. The Applicant also seeks to allow additional signage on the property.
2. The subject properties are located at 50 and 68 Flint Street, Marstons Mills, MA as shown on Assessor's Map 123 as parcels 004/006 and 004/007. They are in the Residence F Zoning District and Groundwater Protection Overlay District.
3. This modification request was submitted to the Zoning Board of Appeals Office on February 3, 2012 in fulfillment of the requirements of Conditions Nos. 27 and 28 of Appeal No. 2009-036.
4. The proposed 9,925 sq.ft building will replace two office trailers and eleven storage boxes. Two greenhouses will be relocated off-site.
5. The Applicant submitted a revised plan entitled "Site Plan, Proposed Improvements at 68 Flint Street", prepared by Sullivan Engineering, Inc. dated January 31, 2012" and building elevations entitled "Proposed Office/Warehouse, Joyce Landscaping" drawn by Northside Design Associates, dated February 1, 2012. These plans and elevations are proposed to supersede the approved plans conditioned in Appeal No. 2009-036.

6. The Site Plan Review Committee reviewed the proposed changes to the site and approved the proposed site plan on February 23, 2012.
7. Condition No. 28 of Appeal No. 2009-36 requires the Applicant to obtain a building permit for the proposed building within one year of the date this decision is filed with the Town Clerk's office. The complete construction of the building and removal of the office trailers and storage boxes from the property must occur within fifteen (15) months of the issuance of the building permit.

Signage

Condition No. 8 of the existing variance limits signage on the site to that permitted by zoning: §240-63 of the Code allows for eight square feet of signage. The applicant has an existing sign on the property that appears to be approximately 20 square feet in area. It appears this sign may have existed prior to the Applicant's purchase of the property.

The Applicant is requesting a second business sign. The new sign is proposed to be 30 square feet in area (approx. 6 feet in diameter) and located on the proposed warehouse building. It appears the sign would consist of the Joyce Landscaping logo. According to the application, a total of 50 square feet of signage is requested.

8. This proposal does not represent an intensification of the uses permitted on the site.
9. Granting the requested modification to allow development of the site in accordance with the proposed plan will not be in derogation of the spirit and intent of the zoning ordinance and will not result in substantial detriment to the public good. The proposal will further separate site operations from abutting residential properties by removing the office trailer located along the southern property line and providing storage and work space within a fully enclosed building.

Vote:

Aye: Brian Florence, George Zevitas, Craig Larson, William Newton, Laura Shufelt

Nay: None

William Newton makes a motion to approve the relief requested with the following conditions;

1. Condition No. 1 of Variance No. 2009-025 shall be modified to read:

Site improvements shall be made in substantial conformance with the plans entitled "Site Plan, Proposed Improvements at 68 Flint Street", prepared by Sullivan Engineering, Inc. dated January 31, 2012 and in compliance with all conditions of the Site Plan Review approval issued February 23, 2012. The building shall be constructed in substantial conformance with the building elevations entitled "Proposed Office/Warehouse, Joyce Landscaping" drawn by Northside Design Associates, dated February 1, 2012, with the exception of signage, which shall be in compliance with the conditions herein.

The following site improvements shall be maintained on the site:

- a. A 50 foot vegetated buffer in the front of the property as it abuts Flint Street;
- b. A 25 foot vegetated buffer in areas as shown on the plan where the property abuts properties used for residential purposes;
- c. A berm not to exceed twenty five (25) feet in height at its highest point from the finished grade of the proposed gravel path as shown on the site plan. The berm will be vegetated with links mix grass and randomized group plantings of perennials and some leafed evergreens, two hundred (200) in number in two-gallon pots. Evergreens would be planted along the lower two thirds, and perennials along the upper third. Plantings are to consist of rhododendron, lecouthoe, day lilies, nepeta, coneflower, and black eyed susans. Bare grass spots must be re-seeded in the month of September, annually, as needed; and
- d. Parking areas as shown on the approved plan, inclusive of topographic changes, drainage, pavement and interior landscaped areas.

The vegetated buffers shall be in substantial conformance with the detailed landscape plan and sections

submitted to file No. 2009-36. The 50-foot front yard and 25-foot side yard buffers shall be delineated and protected with open fencing, boulders, bollards or other suitable materials/devices to prevent vehicles from entering into the buffer zones.

2. Condition No. 8 of Variance No. 1998-16 shall be modified as follows:

A maximum of two signs are permitted on the property. One freestanding sign with a maximum area of 20 square feet and one wall sign with a maximum area of 30 square feet shall be permitted. The wall sign shall only be located on the building façade facing Flint Street. The wall sign shall not be higher than 12 feet from the building foundation at its highest point. Signage shall not be illuminated.

William Newton asks Elizabeth Jenkins to quote the ordinance to be another condition:

Lighting shall conform to Section 240-130 Site Development Standards – All illumination shall be directed and/or shielded as not to shine beyond the perimeter of the site or interfere with traffic.

All other conditions of Variance No. 1998-16 and Variance No. 2009-036 shall remain in full force and effect.

Seconded by Brian Florence.

Laura Shufelt wants to correct the appeal numbers so that they match the preceding numbers quoted.

Vote:

Aye: Brian Florence, George Zevitas, Craig Larson, William Newton, Laura Shufelt

Nay: None

GRANTED WITH CONDITIONS

Laura Shufelt calls a 5 minute recess.

Laura Shufelt calls the meeting back in session at 8:45 PM.

At 8:45, Laura Shufelt calls the Leger appeal and reads it into the record:

7:05 PM

Appeal No. 2012-021 - New

Leger

Linda M. Leger has petitioned for a Special Permit pursuant to Section 240-47.1.A(1) Family Apartments to re-establish an attached family apartment in excess of 800 square feet. The property is addressed 59 Carriage Lane, Barnstable, MA as shown on Assessor's Map 298 as parcel 054. It is in a Residence F-2 Zoning District.

Members assigned: George Zevitas, Brian Florence, Craig Larson, William Newton, Laura Shufelt

Linda Leger is co-owner of the property and is representing the application before the board. Her mother is also with her. Ms. Leger indicates that the apartment existed under the previous owner and that there have been no changes to it. She indicates that she will reside in the main house and her parents will live in the apartment.

Craig Larson asks if she has read the conditions as outlined in the staff report and if she is okay with them. Ms. Leger indicates she has read them and is agreeable to the conditions.

Laura Shufelt asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.

Craig Larson makes the following findings:

Linda M. Leger has petitioned for a Special Permit pursuant to Section 240-47.1.A(1) Family Apartments to re-establish an attached family apartment in excess of 800 square feet. The property is addressed 59 Carriage Lane, Barnstable, MA as shown on Assessor's Map 298 as parcel 054. It is in a Residence F-2 Zoning District

The property was sold to Linda Leger, along with related parties in 2011¹. Ms. Leger is now seeking to reestablish the 1,125 square foot family apartment for occupancy by her parents. No exterior changes to the dwelling are proposed. A special permit is required pursuant to Section 240-47.1(A)(1) as the apartment is between 800 and 1,200 square feet.

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:

Section 240-47.1(A)(1) of the Barnstable Zoning Ordinance allows for a family apartment greater than 800 square feet, not to exceed 1,200 square feet, with a Special Permit from the Zoning Board of Appeals.

- Site Plan Review is not required for single-family residential structures or family apartments.
- After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.

Vote:

Aye: Brian Florence, George Zevitas, Craig Larson, William Newton, Laura Shufelt

Nay: None

A motion is made by Craig Larson to grant the relief being requested with the following conditions:

- 1) Special Permit 2012-021 is granted to Linda Leger to establish a family apartment within her house at 59 Carriage Lane, Barnstable. The family apartment shall be limited to a one-bedroom unit not to exceed 1,125 square feet.
- 2) The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
- 3) The on-site septic system shall comply with the Town of Barnstable Board of Health regulations and Title V without variances from the Board of Health.
- 4) The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a Certificate of Occupancy for the family apartment. The rights authorized by this special permit must be exercised within two years, unless extended.

Seconded by Brian Florence

Vote:

Aye: Brian Florence, George Zevitas, Craig Larson, William Newton, Laura Shufelt

Nay: None

GRANTED WITH CONDITIONS

Upcoming Meetings:

¹ A notarized letter was submitted by the co-owners authorizing Linda Leger to apply for the Special Permit.

April	11 & 25
May	9 & 23
June	27
July	11 & 25
August	8 & 22
September	12 & 26
October	10 & 24
November	14
December	12

Motion is made by Brian Florence and seconded by George Zevitas to adjourn.

Vote:

All in favor.